UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.29
5 November 1993

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

MALTA

1. The Committee considered the initial report of Malta (CCPR/C/68/Add.4) at its 1283rd and 1287th meetings, held on 1 and 3 November 1993, and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the State party's initial report and the constructive manner in which the dialogue with the Committee has been engaged. It notes that the information submitted in the report and that provided orally by the delegation, both in its introductory statement and in the comprehensive and detailed replies to oral questions, enabled the Committee to obtain a clear picture of Malta's actual compliance with the obligations undertaken under the International Covenant on Civil and Political Rights. The Committee, however, regrets that the report deals mainly with constitutional provisions and contains little information about the practical application of the provisions of the Covenant.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes that there are no indications in the report or in the oral submission on the factors or difficulties which may impede the effective implementation of the Covenant's provisions.

[1]At its 1289th meeting, held on 4 November 1993

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C. Positive aspects

4. The Committee notes the efforts undertaken by the Government of Malta in order to guarantee effectively the protection of civil and political rights. Chapter IV of the national Constitution provides an appropriate basis for the effective protection of most of the human rights contained in the Covenant.

5. The recent adoption by Parliament of a number of legal measures, such as the Local Council Act, the proposed review of the Civil Code in order better to ensure the equality of children born out of wedlock and to promote the equality of sexes, the proposed revision of the Investigation of Injustices Act, the forthcoming consideration by Parliament of a draft Data Protection Act and Information Practices Act, indicate the commitment of the Maltese Government to bring its national legislation into line with the Covenant.

6. The Committee notes with satisfaction that, in 1990, Malta acceded to the first Optional Protocol at the same time as it acceded to the Covenant.

D. Principal subjects of concern

7. The Committee is concerned at the fact that the Covenant, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, has not yet been incorporated into the national legal order. The Committee also expresses concern over the status of the Covenant within the Maltese legal system and the lack of clarity concerning the resolution of eventual conflicts between the Covenant and domestic legislation.

8. In this connection, the Committee recalls that, in accordance with article 2, paragraph 2, of the Covenant, each State party to the Covenant undertakes to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.

9. The Committee also expresses concern over the apparent preference accorded, in the domestic law as well as in legal doctrine and jurisprudence, to the European Convention for the Protection of Human Rights and Fundamental Freedoms as against the International Covenant on Civil and Political Rights. In that regard, the attention of the State party is drawn to the fact that the latter guarantees a number of human rights not protected under the former and that permisible restrictions are less broad-based.

10. The Committee notes that the reservations entered by Malta upon ratification of the Covenant with respect to a number of provisions have an adverse effect on the effective implementation of the Covenant. No convincing reasons have

been offered for the reservations to articles 13 and 14, paragraph 6. Additionally, given the actual situation of human rights protection in Malta, some reservations may now have become obsolete.

11. The Committee further notes that certain requirements of the Covenant, such as those referred to in articles 9, paragraph 3, and 26, are not fully met. In that connection the attention of the State party is drawn to the pertinent General Comments adopted by the Committee as well as to the Committee's jurisprudence under the Optional Protocol.

E. Suggestions and recommendations

12. The Committee recommends that the State party take appropriate measures to incorporate the substantive provisions of the Covenant into domestic law and ensure that the restrictions imposed under domestic law do not go beyond those permissible under the Covenant.

13. The Committee also recommends that the Government review, with a view to withdrawing, the reservations made upon ratification of the Covenant, particularly those concerning article 13 and 14 of the Covenant.

14. The Committee expresses the hope that the Government of Malta will consider ratifying the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.

15. The Committee emphasizes that further measures should be taken to ensure that the provisions of the Covenant be made more widely known, particularly among the legal profession, members of the judiciary and administrative authorities. The general public should also be adequately informed of the provisions of the Covenant and those contained in the Optional Protocol.

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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
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Comments of the Human Rights Committee

ROMANIA

1. The Committee considered the third periodic report of Romania (CCPR/C/58/Add.15) at its 1284th, 1285th and 1286th meetings, held on 1 and 2 November 1993, and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the third periodic report of Romania and expresses its appreciation for the detailed and comprehensive information contained therein, particularly with regard to the many legislative developments which have recently taken place. In particular, the Committee expresses its appreciation to the delegation for the additional detailed information it presented to the members of the Committee in response to their questions and comments. The frankness of the report and the openness displayed by the delegation facilitated a most constructive and encouraging dialogue with the State party.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes with concern the legacy of the totalitarian past in Romania, during which time serious and systemic violations of human rights occurred. In this respect, the Committee notes, in particular, that some political and social attitudes still prevalent and generally tolerated in the country are not conducive to the promotion and protection of human rights.

[1]At its 1289th meeting, held on 4 November 1993

C. Positive aspects

4. The Committee welcomes the many recent developments in Romania which represent significant progress in the transition toward democracy and pluralism. In general, the Committee is encouraged by the provisions of the new Constitution and the firm legal basis it provides for a democratic order. In particular, the Committee expresses satisfaction that the Covenant and other international human rights instruments have been incorporated into domestic law and that they appear to occupy a superior position within the legal hierarchy.

5. The Committee notes with appreciation the political reforms undertaken in Romania and the establishment of democratic institutions. The efforts to undertake a thorough legal reform have already yielded many accomplishments, particularly with respect to the new law on the judiciary, reforms in the Penal Code and Penal Procedure and the prospective repeal of certain discriminatory laws such as those which had victimized homosexuals.

6. The Committee welcomes the abolition of the death penalty and the adherence of Romania to the Second Optional Protocol. It also appreciates Romania's recent accession to the First Optional Protocol recognizing the competence of the Committee to receive complaints from individuals alleging a violation of their rights under the Covenant.

7. The Committee also welcomes the openness of the Government in affirming the multicultural nature of Romanian society and the efforts that have been made to engage the participation of minorities in public life.

D. Principal subjects of concern

8. The Committee is concerned that the legal framework may not be in full conformity with the Covenant, particularly in that the general restriction of rights under article 49 of the Constitution is much broader than what is allowed under the Covenant.

9. The Committee expresses concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities and, in particular, offences committed as a result of incitement to ethnic or religious intolerance. This situation is especially threatening to vulnerable groups, such as the Roma (gypsies). The Committee is concerned that the Government has not been sufficiently active in combating such discrimination or effectively countering incidents of violence committed against members of minority groups.

10. The Committee is concerned over abuses committed by the police, such as forcible entry into homes, failure to inform detainees of their rights and ill-treatment of prisoners. In this regard, the Committee notes that the number of investigations, charges and convictions are extremely few compared with the number of complaints received or abuses

reported; that penalties prescribed by law are not commensurate with the gravity of the crimes committed; and that compensation to the victims of abuses is not always forthcoming, all of which contribute to an atmosphere of impunity. This situation is particularly alarming in view of the way it undermines harmonious relations with minorities, thus leading to ethnic marginalization and escalation of violence.

11. The Committee notes with regret the decrease in the participation of women in public life and in their employment and opportunities in recent years. The increasing rate of infant mortality is also a matter for concern.

12. The Committee also expresses concern that the full independence of the judiciary has been not yet been ensured. In this connection, the continuing powers of the Ministry of Justice over judicial decisions and the power to remove judges creates a situation which greatly undermines the independence of the judiciary.

E. Suggestions and recommendations

13. The Committee emphasizes that continuing review is needed to ensure that all relevant laws, regulations and administrative procedures conform to the provisions of the Covenant. In this regard, relevant draft legislation under active consideration should also be in strict compliance with the obligations of Romania under the Covenant. This is especially important in regard to the exercise of freedom of expression since restrictions under article 49 of the Constitution are significantly wider in scope than those permitted under article 19 of the Covenant. The Committee recommends that legal reforms be closely followed by effective changes in practice, particularly in regard to administrative regulations and procedures.

14. The Committee recommends that further measures be taken to protect persons belonging to minority groups and to enable them to exercise their rights under the Covenant, including participation at all levels in public institutions. The Committee also recommends that the Government take more active steps to combat racist and xenophobic attitudes and promote tolerance and understanding among the various ethnic, religious and national groups in Romania. In this connection, a positive approach should be taken to counter negative attitudes in the media which are likely to reinforce racist attitudes among the public, particularly in regard to the Roma.

15. The Committee emphasizes the need for greater control over the police, particularly in the context of the recent authoritarian past from which Romanian society is emerging. Determined and continuing efforts need to be undertaken to ensure that there is no element of racism in law enforcement, either in practice or in public perception. Further progress should be achieved in fully returning the police to civilian control. There should be intensive training and education programmes aimed at law enforcement officials as well as a determined effort to

ensure adequate minority representation in the police force. Steps should also be taken to strengthen recourse procedures for victims of police abuse and ensure adequate follow-up to reports of abuse by thorough investigation and by applying criminal rather than merely administrative sanctions against offenders.

16. The Committee emphasizes the need for the Government to take positive measures to strengthen the situation of women and children, particularly with respect to participation in public life, equal opportunities to employment and remuneration and equal rights and responsibilities in the family. The Committee also recommends that measures be taken to reduce infant mortality.

17. With regard to the independence of the judiciary, the Committee recommends that steps be taken to speed up the reform process and end the present monitoring powers of the Ministry of Justice. Further vigorous efforts should be made to encourage a culture of independence among the judiciary itself.

18. The Committee underlines the need for the Government to take a more active approach in overcoming public attitudes which hamper the effective implementation of human rights standards. Public information and education activities need to be strengthened so that the general public may be better acquainted with the provisions of the Covenant and the steps taken to apply it in practice. In this connection, greater use could be made of non-governmental organizations and the media.